UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/674,188
Filing Date: September 29, 2003
Appellant(s): SELBY, DAVID A.

Mark D. Simpson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/23/10 appealing from the Office action

mailed 03/23/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 9-22 are rejected and pending in the application.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 2003/0028518	MANKOFF	02-2003
US 2002/0062245	NIU ET AL	05-2002
US 2001/0014868	HERZ ET AL	08-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

Claims 9-13 and 16-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868).

Claims 9 and 16, Niu teaches:

A method of influencing the actions of users of an interactive content- delivery

system, comprising the steps of:

identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system (see paragraphs 77-81, 89);

and

presenting users of said interactive content-delivery system with incentives based upon said probabilities (see paragraphs 77-82; 89, 97,115).

Nui does not expressly teach:

and designating certain of said selections as low probability selections based on the identified probabilities, whereby said low probability selections receive higher-value incentives than selections having higher probability of selection than said low probability selections. However, Herz teaches that it is old and well known in the promotion art to offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers (see paragraphs 167, 303). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Nui would offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers, as taught by Herz in order to increase the probability that said customers respond to said offers and become loyal customers.

Claims 10 and 17, Niu teaches:

wherein said identifying step includes at least the step of: estimating probabilities of selection for each possible selection offered by said interactive content delivery system if historical user data for said interactive content delivery system is unavailable (see paragraph 41).

Claims 11 and 18, Niu teaches:

wherein said identifying step further comprises at least the step of analyzing historical user data for said interactive content delivery system to identify probability of selection based on said historical user data (see paragraph 42).

Claims 12 and 19, <u>Niu</u> teaches:

wherein said step of analyzing historical user data comprises at least the step of performing historical analysis of paths taken by users who have not been presented with incentives (see paragraph 43).

Claims 13 and 20, <u>Niu</u> teaches:

wherein said step of analyzing historical user data is continually updated with new historical user data obtained after users of said interactive content-delivery system have been presented with incentives (see paragraph 49).

Claim 8, <u>Niu</u> teaches:

A method of managing website visitors, comprising the steps of:

receiving a content selection from a website user (see paragraph 41);

analyzing said content selection and determining probabilities associated with the selection of all sub-choices presented to said user based on said content selection (see paragraphs 41, 97);

presenting incentives associated with each sub-choice based upon said probabilities (see paragraph 89); and

repeating the above steps until a desired end choice has been selected (see paragraph 115 "don't offer a buyer an incentive as said buyer does not need an incentive to buy").

Claims 14-15 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868) and further in view of Mankoff (US 2003/0028518).

Claims 14 and 21, Niu teaches:

wherein said incentives are selected based on gaming theory and include positive (see paragraph 115 "offering a searcher a discount as an incentive to buy") but does not expressly teach and negative incentives. However, Mankoff teaches that it is old and well known in the promotion art to offer negative incentives to consumers where the value of said incentives decreases with time in order to trigger said consumers to buy a product earlier in time (see paragraph 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Niu would modify his invention to offer negative incentives to consumers, as taught by Mankoff in order to trigger said consumers to buy a product earlier in time.

Claims 15 and 22, Niu teaches:

wherein said interactive content-delivery system comprises a web-based e-commerce site (see paragraph 41).

(10) Response to Argument

The Appellant argues in pages 5-8 of the Brief that Niu does not teach "identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system". The Appellant further argues that Nui and Herz do not teach "designating certain of said selections as low probability selections based on the identified probabilities" nor "whereby said low probability selections receive higher-

value incentives than selections having higher probability of selection that said low probability selections". The Appellant further argues that <u>Herz</u> does not teach probabilities of selection and therefore, according to the Applicant, cannot teach designating certain selections as low probability nor assigning higher incentives to low probability selections.

The Examiner answers that <u>Niu</u> teaches a program that decides to send a promotion based upon a rule set by a manager where the manager tie a promotion to a probability and where said rule set is based upon all selections offered by a content delivery system, such as "viewed between X and Y products", "viewed between X and Y pages", "has shopping cart containing X and Y items" "probability of returning", "viewed between X and Y product categories", "Viewed between X and Y Products", "viewed a product for more than X to Y seconds", "visitor moving through the site, a promotion is given only when the probability of purchasing is between 30-40% or probability of returning is between 10 and 20% or the estimated response to an offer is between 75-80%" (see paragraphs 68-82). <u>Nui</u> teaches targeting a customer with promotions that may need some coercion to complete a sale (see paragraph 71). <u>Nui</u> also teaches that subject matter and the presentation of a promotion may be customized to the visitor's preferences due to the information tracked and recorded by the system (see paragraph 45), such storing click-stream data from a visitor to the website, calculating the probability that the visitor will leave the website and the probability that the visitor will make a purchase on the website based upon click-stream data, utilizing the calculated probabilities to decide whether real time promotions should be generated on the website

and automatically calculating what promotion to send, when to send them and how to send them, if real time promotions are to be generated (see paragraph 11). Therefore, contrary to Appellant's argument, Nui identifies probabilities of selection with respect to all selections offered by said interactive content-delivery system by storing click-stream data from a visitor to the website, calculating the probability that the visitor would leave the website, probability that the visitor would make a purchase on the website, would visit a certain category or product when said visitor is moving through the site based upon said visitor click-stream data history, utilizing the calculated probabilities to decide whether real time promotions should be generated on the website and automatically calculating what promotion to send, when to send them and how to send them, if real time promotions are to be generated. Therefore, contrary to Appellant's argument, Nui teaches the claimed limitation identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system. Furthermore, Nui teaches for example that a promotion is given only when the probability of purchasing is between 30-40% (see paragraph 81) or the probability of returning is between 10 and 20% (see paragraph 77). Therefore, Nui teaches that a promotion is given only when the probability of purchasing is a low probability such as 30-40% for purchasing or 10-20% for returning but when the probability of purchasing or returning is high such for example 90% a promotion is not given, as the system considers that the visitor does not need to receive an incentive promotion to coerce said visitor to make a purchase or return to the website. Herz teaches selecting offers that are likely to result in profitable sales based upon the probability of said offers of being accepted by a consumer (see

paragraph 37) and offering a bigger offer value to customer that have a lower probability of accepting an offer (see paragraph 167, 303). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Nui</u> would offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers, as taught by <u>Herz</u> in order to increase the probability that said customers respond to said offers and become loyal customers. Therefore, contrary to Appellant's argument, <u>Nui</u> and <u>Herz</u> teach Appellant's claimed invention "whereby said low probability selections receive higher-value incentives than selections having higher probability of selection that said low probability selections".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

/JOHN G. WEISS/
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Eric Stamber/E. W. S./
Supervisory Patent Examiner, Art Unit 3622